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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 379

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., appellants

v.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the specially constituted District Court (R. 48) has not been reported.

The two reports of the Interstate Commerce Commission (R. 7, 34) are reported in 197 I. C. C. 245 and 200 I. C. C. 609.

JURISDICTION

The final decree of the District Court was entered June 21, 1934. (R. 56.) Petition for appeal was

filed August 6, 1934, and allowed on the same day. (R. 233, 235.) The jurisdiction of this Court rests upon the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C., Title 28, Sec. 47) and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345). Probable jurisdiction was noted by this Court on October 8, 1934.

QUESTIONS PRESENTED

I. Whether, upon findings supported by evidence that reduced rates stated in schedules proposed by appellee were unreasonably low and would disrupt long-standing rate relationships established by competing carriers from competitive groups of coal mines and would lead to a "rate war" among the carriers and would result in impairment of their revenues and their ability to provide adequate transportation service, in violation of Section 1 (5) and Section 15a (2) of the Act, the Commission proceeding under Sections 15 (1) and 15 (7) of the Act had power to require cancellation of the proposed schedules, without prescribing the rates or the minimum rates to be charged.

II. Whether the Commission's findings in this case constituted a sufficient basis for its order.

III. Whether the evidence before the Commission was sufficient to support its findings and order.

IV. Whether in the proceedings before it the Commission imposed upon appellee the burden of

justifying the reduced rates proposed by it, and, if so, whether such action renders the order void.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are printed in the Appendix (*infra*, pp. 64–67).

STATEMENT

This is a direct appeal from the final decree of the specially constituted District Court for the Northern District of Illinois permanently enjoining and restraining enforcement of the order of the Interstate Commerce Commission issued November 8, 1933, by Division 2, in a proceeding entitled "Investigation and Suspension Docket No. 3843, *Coal from Indiana to Illinois*", and affirmed by the entire Commission on April 18, 1934, upon reargument and reconsideration.

The nature of the order: The order required the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called appellee, to cancel certain schedules which it had filed with the Commission proposing to reduce its carload rates applicable to the transportation of bituminous coal from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups [1] in Indiana, to Rockford

[1] Several mines located in proximity to each other constitute a "group", "origin group", or "rate group." One rate applies on coal transported from all mines constituting one of these groups, and is known as a "group rate." (See R. 150–151, for illustration.)

and Freeport, Illinois, and to certain points intermediate thereto in the latter State.[2] The schedules (R. 60–63) were filed to become effective December 23, 1932. The rate to Rockford and Freeport from the Brazil-Clinton group was $1.87 per ton, and from the Linton-Sullivan group $1.92. Appellee proposed to reduce each of these rates 17 cents, to $1.70 and $1.75, respectively. Reductions ranging from 4 to 10 cents were also proposed in the rates to thirty-six intermediate destination points on appellee's line in Illinois. (R. 43–44.)

Shipping points and rate relationships: The coal mines in the coal producing areas in Indiana and Illinois are divided into several groups from which "group" rates apply. The principal Indiana groups are Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville. (Map, Ex. 5, R. 149.) The principal groups in Illinois are known as the Springfield group and the Southern Illinois group.

Keen competition in the sale of coal at Rockford and Freeport exists between the Indiana groups and the Illinois groups, and, also, between the individual groups in each of these States.

The intrastate rates from the various origin groups in Illinois are definitely related to each other, and are generally in conformity with the

[2] The schedules proposed reductions to 38 destinations, of which Rockford and Freeport are the most important. For purposes of brevity and clarity, Rockford and Freeport are used herein as illustrative unless otherwise indicated.

Commission's findings in *Illinois Coal Cases, 1920,* 62 I. C. C. 741 and 64 I. C. C. 751. The interstate rates from the various Indiana groups are closely related to rates from the Illinois groups and are also definitely related to each other.

Generally speaking, these rate relationships were established by the carriers and not by the Commission, although the Commission did fix a differential of 35 cents over the Southern Illinois group from Western Kentucky to Northern Illinois points in *Illinois-Indiana Coal Cases,* 128 I. C. C. 265, and recently affirmed that differential in *West Kentucky Coal Bureau* v. *Illinois Central R. Co.,* 172 I. C. C. 279. (R. 35.)

The southern Illinois "base group": The principal coal producing area in Illinois is in the southern part of the State, and the Southern Illinois group, one of the several groups in that portion of the State, is considered the "base group" for making rates from Illinois mines and Western Kentucky mines to destinations in Northern Illinois and the Northwest, the rates from other Illinois groups and Western Kentucky groups being based differentially upon those of the Southern Illinois group. (R. 35.) To illustrate, the rate to Rockford from the Southern Illinois or base group is $2.00 per ton, while the rate from the less distant Springfield group is fixed at a 30-cent differential under or less than the rate from the Southern Illinois group rate, or $1.70; and the rate from the

farther distant Western Kentucky group is fixed at a differential of 35 cents over or higher than the rate from the Southern Illinois group, or $2.35.

Illinois-Indiana rate relationships: For many years prior to 1930 coal rates from the Springfield group in Illinois and from the Brazil-Clinton group in Indiana to Rockford, Freeport and other destinations here considered were maintained on a parity. (Ex. 2, R. 144.) The rates to those destinations from the other Indiana groups were and are made differentially over the rates from the Brazil-Clinton group, the rate from the more distant Linton-Sullivan, Princeton, and Boonville groups being 5, 12, and 15 cents higher than rates from the Brazil-Clinton group. (R. 40.)

Order of Illinois Commission: On August 20, 1930, by order of the Illinois Commerce Commission, the intrastate rates from the Southern Illinois and Springfield groups, among others, to the destinations here considered were reduced from $2.17 to $2.00, and from $1.87 to $1.70, respectively, a reduction of 17 cents in each rate, thus destroying the parity that had existed prior to that date between the rates from the Indiana groups and the Illinois groups. Similar reductions were later made in the rates from the Western Kentucky group so as to preserve their relation with the Southern Illinois group. (R. 35–36.)

Prior proceedings under Section 13: After these reductions in the intrastate rates the principal

carriers, including the appellee, operating within Illinois, filed a complaint with the Interstate Commerce Commission, alleging that the reduced intrastate rates were in violation of Section 13 of the Interstate Commerce Act, and asked the Commission to find that those rates were unlawful, would cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce and those in interstate commerce, and would result in unjust discrimination against interstate commerce. (R. 36.)

The evidence in that proceeding made specific comparisons of the intrastate rates from the Illinois groups to Rockford, Freeport and other destinations with the interstate rates from the Indiana mines to the same destinations, including the rates which appellee proposed in the instant proceeding to reduce. Witnesses for appellee and other carriers testified in that case that not only were the intrastate rates too low, but that the interstate rates were lower than reasonable maximum rates. In its decision, *Intrastate Rates on Bituminous Coal between Points in Illinois,* 182 I. C. C. 537, the Commission found that some of the Illinois rates and most of the interstate rates were too low and that the intrastate rates should not be held unlawful under Section 13 of the Act until and unless the interstate rates from the Indiana groups to the same destinations were increased to a level more nearly commensurate with the general level of rates

on coal in that territory. (R. 36, 37.) With respect to the low level of the interstate rates, including those which appellee proposed to reduce in the instant proceeding, the Commission said (R. 36):

> While it is evident that a number of the assailed rates from Illinois groups to Rockford, Freeport, and Dixon are well below the reasonable level of rates in this territory, that appears to be true also of most of the rates from the Indiana groups to the same destinations. For example, the rate from the Brazil-Clinton group to Dixon is only 66.5 percent of the Holmes & Hallowell scale,[3] which is the same percentage of that scale as is reflected by the assailed rate from southern Illinois to Dixon; and the rate from Brazil-Clinton to Freeport is only 67 percent of the scale, as compared with 64 percent from southern Illinois to Freeport and 66 percent from southern Illinois to Rockford. Rates from the more distant Indiana groups to these three destinations range as low as 56 percent of the scale. The Illinois producers urge with much force that their rates to Rockford, Freeport, and Dixon should not be increased so long as such low rates from the Indiana groups to the same destinations are permitted to continue. The principal competition of the Illinois producers at these destinations comes from In-

[3] *Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 69 I. C. C. 11, 18, in which the Commission prescribed a distance-scale of coal rates, which the Commission and the carriers used in the instant proceeding for purposes of comparison.

> diana, and we find no sufficient justification for requiring any of the Illinois rates to these points to be increased until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory.

The unusually low level of these rates was again commented upon by the Commission in *Intrastate Rates on Bituminous Coal Within Ohio,* 192 I. C. C. 413.[4] Upon the evidence of record in that case it said (p. 428): "* * * the basis of rates on coal in the Illinois territory is the lowest in the country." (R. 42.)

The Commission's findings in the two cases just mentioned concerning the low level of the rates were confirmed by appellee's own testimony in the instant case. Its coal-traffic manager testified that the rates sought by appellee to be reduced are "less than maximum reasonable rates as are all the rates from Illinois, Indiana, and western Kentucky measured by any test evolved by the Commission in recent years." (R. 74.)

The instant proceeding before the Commission: Disregarding the Commission's findings in those two cases (confirmed by appellee's own testimony in the instant proceeding) and the suggestion made by the Commission in the *Illinois case* that these

[4] The validity of the Commission's order in that case was sustained by the District Court, 6 F. Supp. 386, and by this Court, *State of Ohio* v. *United States*, 292 U. S. 498; and on reargument, No. 868, Oct. Term, 1933.

interstate rates should be increased to a reasonable level, appellee sought, by filing the proposed schedules here involved, to reduce to a still lower level the rates from all mines located on its line in the Brazil-Clinton and Linton-Sullivan groups to Rockford, Freeport and 36 other destinations in Illinois.

Protests were immediately filed by the Illinois Commerce Commission, individual coal operators, coal mining organizations in Illinois, and railroads which compete with appellee in the transportation of coal to the points just mentioned,[5] and the Commission, on December 22, 1932, issued an order (R. 71) pursuant to Section 15 (7) of the Act suspending the proposed rates, instituting an investigation and entering "upon a hearing concerning the lawfulness of rates" stated in the proposed schedules (R. 71).

Report of Division 2: After the hearings were concluded and oral argument was heard by Division 2, upon exceptions to the Examiner's proposed report, the Division rendered its report on November 8, 1933 (R. 7), finding that the proposed sched-

[5] In addition to the Illinois Commerce Commission the protestants were Consolidated Coal Company of St. Louis, Mo., Illinois Coal Traffic Bureau, Springfield, Illinois Coal Traffic Bureau (representing 6 companies which operated 21 mines in the Springfield district), and a number of carriers in Illinois, including Alton Railroad Company, Chicago, Burlington & Quincy Railroad Company, Chicago and Illinois Midland Railway Company, Illinois Central Railroad Company, Missouri Pacific Railroad Company, and Wabash Railway Company. (R. 64–74.)

ules "should not be undertaken in the piecemeal manner here proposed", and had not been justified, and issued its order directing that they be cancelled on or before January 22, 1934. (R. 12.) Responsive to appellee's petition filed January 2, for rehearing, reargument, and reconsideration, and for an extension of the effective date of the order, the Commission postponed the order until February 22, but denied the petition in all other respects. On February 20, the Commission further postponed the order until April 23, 1934.

Reargument and report of the full Commission: On March 7, the Commission reopened the proceeding for argument and reconsideration by the entire Commission. On April 18, 1934, the Commission rendered its report on reconsideration (R. 34) and issued its order (R. 48) affirming the order of Division 2, which required cancellation of the suspended schedules.

Appellee's contentions before the Commission: (1) loss of tonnage: Appellee claimed before the Commission, in support of the proposed reductions, that it had a right to "an equality of opportunity" in the Rockford and Freeport markets for the mines served by it (R. 74), and asserted that the reductions in intrastate rates from Illinois mines in 1930 had deprived it of tonnage which it sought to regain through the reductions in its own rates (R. 38). The Commission found, however, that the record contained no factual basis for

this assertion. Its report states (R. 38), from an exhibit of record, that the volume of coal moved to Rockford in 1931 from all groups in Illinois was 58.4 percent of the volume moved in 1929 (the year prior to the reductions in the Illinois intrastate rates), and from all groups in Indiana 88.7 percent; that the volume moved to Rockford in 1932 from all groups in Illinois was 53.4 percent of that moved in 1929, and from all Indiana groups 87.7 percent, and that (R. 39):

> On the record we are of the opinion that the percentage of the tonnage from the Indiana groups to the destinations herein considered during the period shown had not decreased as a result of the reduced rates from the Illinois groups.

(2) *Relation of rates to distances:* Appellee also contended that the proposed rates were higher, based on distance or length of haul, than the rates from the Springfield group to the destinations involved. To support this claim it computed distances from the Brazil-Clinton and Linton-Sullivan groups over its direct route and only from the mines on its own line, but from the Springfield group it computed the *average* distance from all origins or mines in that group and over all routes. In disapproving this method of computing the lengths of hauls for purposes of comparison, the Commission said (R. 39–40):

> Such a comparison is worthless because like things are not compared. If the short tariff distances from mines on the Illinois Central in the Springfield group were used in comparison with the distance of 231 miles from mines on the Milwaukee in the Brazil-Clinton group, the comparison would favor the Springfield group from which the short tariff distance to Rockford is 199 miles. Such a method of computing distances would tend to destroy all groupings and cannot be adopted.

The Commission pointed out that if the lengths of hauls from the Indiana mines and the Illinois mines, respectively, were properly computed to represent fairly the average of the short tariff route from all origins on all lines in the respective groups of mines, the average distance from the Springfield group to Rockford would be 237.9 miles, and to Freeport 261 miles, while the average distance from the Brazil-Clinton group to Rockford would be 272 miles, and to Freeport 304 miles. (R. 39.)

(3) *Other carriers from the Indiana mine groups:* Appellee urged the Commission to ignore the effect which the proposed reductions would have upon the six other carriers which serve the Brazil-Clinton and Linton-Sullivan groups, and stated that whatever action those competing carriers might take would be immaterial because ap-

proximately 95 per cent of the coal moving from those two groups to Rockford and Freeport moved over appellee's line. In response, the Commission said (R. 40):

> We do not agree with that statement, insofar as it relates to the pertinency of any action which might be taken by the other lines in the group to meet reduced rates established by the Milwaukee. The record indicates that six carriers, in addition to the Milwaukee, serve either one or both of the Brazil-Clinton and Linton-Sullivan groups. The proposal of the Milwaukee, if permitted to become effective, would not only disrupt the long-existing differential relation between the several Indiana groups but it would also have the effect of splitting up the Brazil-Clinton and Linton-Sullivan groups, with lower rates from mines on the Milwaukee in these groups than from mines in the same groups and in the same immediate vicinity on the lines of other competitive carriers.

Commenting further upon the effect of the proposed reductions upon the highly competitive and finely adjusted rate structure and relationship which had existed in the Illinois-Indiana territory for many years, the report continues (R. 40):

> The coal-producing area in Indiana, consisting of several groups, extends southward from the Brazil-Clinton group (the so-called base group) to the Ohio River. The rates from the more-distant southern groups are

based differentially over those from the Brazil-Clinton group. To the destinations here considered the rates from the Linton-Sullivan, Princeton, and Boonville groups are 5, 12, and 15 cents, respectively, higher than the rates from the Brazil-Clinton group. Stated otherwise, rates from the Linton-Sullivan group are 5 cents higher than rates from the Brazil-Clinton Group; rates from the Princeton group are 7 cents higher than rates from the Linton-Sullivan group; and rates from the Boonville group are 3 cents higher than the rates from the Princeton group. This differential relation has been voluntarily established by the carriers, including respondent herein, serving the Indiana groups. The proposed reductions would increase the above differentials of 12 and 15 cents from the Princeton and Boonville groups to 29 and 32 cents, respectively, over the Brazil-Clinton group. On the other hand, if the suspended rates are permitted to become effective, and the present differential of 15 cents over Brazil-Clinton group rate is maintained, the rate from the Boonville group to the destinations here considered would become 15 cents less than the rate from the southern Illinois group, although the distance is approximately 50 miles less from the latter group, thus tending to precipitate further reductions in the Illinois intrastate rates.

Revenue effects: Concerning the ultimate revenue effects of the proposed rates, the Commission

referred to in its findings in the *Illinois case, supra,* that continuation of the 5-cent reduction prescribed by the Illinois Commission in the rates from the Illinois groups to Chicago and a similar reduction in the interstate rates from and to those points, and from the Indiana and Western Kentucky groups would result in a net annual loss to the carriers of more than $600,000.00, and stated (R. 43):

> The record in the instant case shows that certain routes from the southern Illinois group to Rockford operate through Chicago. If the rate from the southern Illinois group to Rockford is reduced a further 17 cents, as in all probability it would be, and which protestants argue would be inevitable, it would result in a rate of $1.83 to Rockford as against a rate 12 cents higher to Chicago, an intermediate point over certain routes. Such a rate could not be maintained to Chicago without fourth-section relief. It would, however, be difficult to justify such relief because Chicago is a much more important market than Rockford, and would at least be entitled to a rate no higher than the rate to Rockford. Based on the coal tonnage to Rockford in 1932 from the Illinois, Indiana, and western Kentucky fields, a 17-cent reduction would result in an annual revenue loss to the carriers approximating $48,600. Should the rate to Chicago be reduced to the level of the rate to Rockford, the net annual revenue loss to the carriers, based upon the tonnage of recent years referred to in the Illinois case, would exceed $1,400,000.

The Commission's conclusion concerning the effect which the proposed reductions would have upon the rate structure (both within and between mine groups and States), upon the revenues of the several competing carriers and their ability to render adequate and efficient railway transportation service, was (R. 44):

> Only the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups are before us in this proceeding. The immediate effect of the Milwaukee's proposal would be to split those groups, with lower rates from mines on that line than from mines on competing lines in the same groups. As hereinbefore indicated, it was testified by witnesses on behalf of protestants that this condition would not long prevail, as the other carriers in those groups would, for competitive reasons, publish similar reduced rates. Such reductions would destroy the differential relations now existing as between those groups and the other Indiana groups, with the probability of mines and carriers in such other groups seeking similar reductions. The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the Illinois case, to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western

> Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service.

Dealing with the reasonableness of the proposed rates, the Commission gave consideration to the revenue which appellee would derive from them and compared it with the revenue produced by the intrastate rates from the Springfield group to the same destinations. It pointed out that the average distances from the Springfield group to Rockford and Freeport are 34.1 and 43 miles, respectively, less than the distances from the Brazil-Clinton group, and stated (R. 44):

> Under the proposed rates, the ton-mile revenue from the Brazil-Clinton and Linton-Sullivan groups would be 6.2 and 6 mills, respectively, to Rockford, and 5.5 and 5.3 mills, respectively, to Freeport, as compared with ton-mile revenue of 7.1 to 6.5 mills from the Springfield group to the same respective destinations. As respondent has testified that it considers the rates from Springfield as being lower than reasonable, it is difficult to perceive how it can justify the proposed reduced rates under which the revenue would be still lower than the revenue accruing under the rates from Springfield.

In concluding that the proposed rates were unreasonably low, the Commission stated (R. 44–45):

> In *Coal Trade Assn.* v. *Baltimore & O. R. Co.,* 190 I. C. C. 643, decided January 24, 1933, division 4 prescribed reasonable rates based on distance on bituminous coal, in carloads, from the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and Boonville groups in Indiana, to destinations in eastern-central Illinois, including such points as Arcola, Champaign, Decatur, Danville, Effingham, Bloomington, and Hoopeston. The basis therein prescribed applies for distances up to and including 300 miles. For 272 and 298 miles the rates are $2.07 and $2.15, respectively, as compared with the rates of $1.70 and $1.75, respectively, proposed by respondent herein for like distances from the Brazil-Clinton and Linton-Sullivan groups, to Rockford. If the rates be extended at the rate of progression shown for the last two 25-mile blocks, they, for 304 and 327 miles, the respective distances from the Brazil-Clinton and Linton-Sullivan groups to Freeport, would be $2.23 and $2.31, as compared with rates of $1.70 and $1.75, respectively, from the Brazil-Clinton and Linton-Sullivan groups to Freeport, proposed by respondent. The rates proposed herein would approximate 82 percent to Rockford and 76 percent to Freeport of the rates prescribed for like distances in the above case. In addition to disrupting the differential relation existing between the several Indiana groups,

> the proposed rates, compared with rates recently prescribed for like distances in this general territory, would be unreasonably low.

Statutory authority and ultimate findings: The Commission then discussed briefly the duties and powers imposed upon it by Sections 1 (5) and 15a (2) of the Act, and, after referring to previous decisions by it and to decisions of this Court construing the latter section in the light of the policy and purpose of Transportation Act, 1920, made the following ultimate findings (R. 46–47):

> We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.
>
> We find that the proposed rates would be unreasonable and in violation of sections 1 (5) and 15a (2) of the Act.

Court proceeding below: Appellee filed this suit February 21, 1934 (R. 13) to annul and enjoin the order issued November 8, 1933, by Division 2.

Having, on February 20, 1934, further postponed the effective date of that order to April 23, 1934, the Commission on March 7, 1934, reopened the proceedings for reargument before and reconsideration by the entire Commission. (R. 35.) The District Court postponed hearing upon the application for injunction until April 20, 1934 (R. 19, 26, 28), after the entire Commission had concluded its reconsideration of the reopened proceedings and rendered its report and order of April 18, 1934. That report, order and the record before the Commission, consisting of 239 pages of oral testimony and 45 exhibits, were introduced in evidence. (R. 58.) The bill of complaint (the allegations of which were directed against the order of Division 2) was allowed by the court to be treated as a supplemental bill attacking the order of April 18, and the answers of the defendant and intervening defendants to the original bill were treated as answers to the bill as amended (R. 57).[6] The Commission filed an amended answer. (R. 31.)

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[6] The bill named the United States of America as defendant. The Interstate Commerce Commission, Alton Railroad Company, Illinois Central Railroad Company, Chicago & Illinois Midland Railway Company, Chicago, Burlington & Quincy Railroad Company, and Missouri Pacific Railroad Company intervened in support of the order (R. 20–28); and 16 coal mining companies located on appellee's line in Indiana intervened as parties plaintiff. (R. 14.) Summons and Severance was served upon Chicago & Illinois Midland Railway Company, which did not join the defendant and other intervening defendants in this appeal. (R. 235–236.)

At the conclusion of the hearing the court granted an interlocutory injunction restraining enforcement of the Commission's order pending further order of the court (R. 29), and, on June 13, 1934, rendered its opinion (R. 48), findings of fact and conclusions of law (R. 54), and issued its final decree (R. 56) by which it made permanent its interlocutory decree and perpetually enjoined enforcement of the Commission's order.

The District Court held that the evidence did not justify the conclusion that the rates would lead to a disruption of the coal rate structure in Indiana and related areas, and to impairment of the revenues of carriers in those areas and their ability to provide adequate transportation service as contemplated by Section 15a of the Act. (R. 50–52.) It found that the rates proposed by appellee from the Brazil-Clinton and Linton-Sullivan mines to Rockford, Freeport and intermediate destinations "will enable those mines to undersell in the destinations mentioned, coming from mines not so favorably situated, with the result that the Milwaukee [appellee] will derive a greater revenue and the buyers of coal at those destinations will obtain that commodity at a lower price." (R. 52.) Although the record contained no evidence concerning transportation costs incurred by appellee or other carriers of the coal in question, the court said (R. 51):

> There seems to be no question but that the Milwaukee is in a position to serve the mines in the Brazil-Clinton and Linton-Sullivan groups which are on its lines at a much cheaper rate than other carriers whose lines touch coal mines in the same vicinity and more cheaply than the lines in Illinois can carry coal from the northern Illinois and Springfield groups to Rockford and Freeport. . . . .

The court disagreed with the Commission's finding (R. 39) that the percentage of the tonnage from the Indiana groups "had not decreased as a result of the reduced rates from the Illinois groups" and made its own finding (R. 55) that the reduction in volume from the Clinton group to Rockford "was due, in part, to the disparity in rates brought about by the reduced intrastate rates." It held that there was no evidence to show that the proposed rates "were below a reasonable minimum nor that they were noncompensatory" (R. 50), that there was "no evidence that the proposed rates in and of themselves are unreasonable" (R. 51), and that "in the absence of evidence that the proposed rate is not compensatory or below a reasonable minimum there is nothing in section 1 (5) of the act which justifies the Commission in setting it aside." (R. 52.)

The court concluded that there was no evidence to show "that the present rate structure is fair or

that it is reasonable; no evidence that its disruption would necessarily lead to the introduction of unfair or unreasonable rates" (R. 52), that "there is no evidence that the proposed rates of the Milwaukee will interfere with adequate and efficient railway service" (R. 52), and, finally, that "there is nothing in the section [15a] as it now stands authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the same group not so well situated, to earn a fair return, even if the act of 1920 did so provide. Nor is there any evidence in the record that the proposed rates of the Milwaukee if allowed to stand will so affect the earning capacity of any other railroad." (R. 53.)

SPECIFICATIONS OF ERROR

The District Court erred:

(1) In holding and deciding that the order of the Interstate Commerce Commission of November 8, 1933, as affirmed by the order of April 18, 1934, is not supported by substantial evidence.

(2) In holding and deciding that there was no substantial evidence in the record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act.

(3) In holding that there was no evidence to show that the proposed rates in and of themselves are unreasonable.

(4) In holding and deciding that there was no evidence that the proposed rates of the Milwaukee will interfere with adequate and efficient railway service.

(5) In holding and deciding that there is nothing in Section 15a (2) of the Interstate Commerce Act, as amended by the Emergeney Railroad Transportation Act, 1933, "authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the act of 1920 did so provide."

(6) In not holding and deciding that there was substantial evidence in the record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act.

(7) In not dismissing the bill of complaint.

SUMMARY OF ARGUMENT

I. Section 15 (1) and (7) empowers the Commission to prevent establishment and require cancellation of schedules proposing interstate rate reductions which are unreasonably low, will lead to further rate reductions and will result in unnecessary impairment of carriers' revenues and their ability to provide adequate transportation service, in violation of Section 15a (2), as amended, regardless of whether, measured by standards used in determining the reasonableness of particular rates

under other provisions of the Act, the proposed rates are compensatory or above the minimum of reasonable rates.

These are associated provisions of the Act enacted for the purpose of preserving carrier income in the interests of adequate and efficient transportation service, and to that end Section 15 (1) must be construed in the light of Section 15a and as supplementing it. This Court has consistently so construed the power granted by Section 13 (4) to require increases in intrastate rates to minima prescribed by the Commission. *United States* v. *Louisiana,* 290 U. S. 70; *New England Divisions Case,* 261 U. S. 184; *Railroad Commission of Wisconsin* v. *C. B. & Q. R. Co.,* 257 U. S. 563; *Dayton-Goose Creek Ry. Co.* v. *United States,* 263 U. S. 456. *A fortiori,* the minimum rate power granted by Section 15 (1) should be so construed, for, as stated in the *Wisconsin case, supra,* interstate rates produce approximately two-thirds of the revenue required to provide adequate transportation service while intrastate rates produce only one-third. The three decisions of district courts, other than the decision below, which have construed the minimum rate power over interstate rates, hold that its exercise is not limited to rates which are non-compensatory or below a reasonable minimum but extends to rate reductions which will disrupt rate structures resulting in "rate wars" and impairment of carriers' revenues. *Jefferson Island Salt*

Mining Co. v. *United States,* 6 F. (2d) 315; *Anchor Coal Co.* v. *United States,* 25 F. (2d) 462; *Youngstown Sheet & Tube Co.* v. *United States,* 7 F. Supp. 33. The Commission itself has consistently construed and applied its minimum interstate rate powers in the light of and as supplementing Section 15a, both before and since that section was amended in 1933. *Container Service,* 173 I. C. C. 377.

The purposes of that section and its pivotal function in the scheme of national control over railroads asserted by Transportation Act, 1920, for national purposes were not changed by the 1933 amendment. *Florida* v. *United States,* 292 U. S. 1.

The order is not void because the Commission did not prescribe minimum rates in lieu of those it required to be cancelled. The purpose of the minimum rate power is not merely to enable the Commission to *prescribe* rates, but also, in conjunction with the suspension power under Section 15 (7), to *prevent* establishment of rates which, measured by the standards and purposes of Section 15a or other provisions of the Act, are too low. Since the statute confers both powers, an exercise of the *preventive* power unaccompanied by exertion of the affirmative power to prescribe rates could not exceed the power granted. Nor is it arbitrary action, for the cancellation does not deny or deprive appellee of the right to establish lawful rates, but merely denies the proposal to estab-

lish rates found to be unlawful, and leaves appellee in its previous position with its existing rates in effect. The order does not require that appellee continue charging the latter rates, nor does it determine whether they are lawful.

Authority to fix maximum rates does not preclude authority to declare unlawful proposed rates as being too high without at the same time fixing maximum rates. See: *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 279 U. S. 768. There would appear to be no reason why the similar power to fix minimum rates should exclude the power to declare proposed rates unlawful as too low without fixing minimum rates.

II. The Commission made sufficient findings to support its order. The report contains all basic findings and ultimate conclusions of fact necessary to meet the requirements stated in decisions of this Court (*Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457; *United States* v. *Louisiana,* 290 U. S. 70; *Beaumont, Sour Lake & Western Ry. Co.* v. *United States,* 282 U. S. 74; *Florida* v. *United States,* 282 U. S. 194), and are sufficient to enable the Court to determine whether there is "a rational basis for the conclusions approved by the administrative body." *Mississippi Valley Barge Line Company* v. *United States,* 292 U. S. 282, 287.

III. The evidence adequately supports the Commission's findings and order. The record discloses that the present case is substantially a continuation of constantly recurring rate controversies be-

fore the Commission due to the intense competition between coal operators in the Indiana, Illinois, and Western Kentucky areas and the carriers serving them, thus giving the Commission a background of experience and intimate knowledge of the competitive rate and transportation circumstances presented by this case. The instant record contains all pertinent facts concerning the competition between the mines and the carriers, comparisons of rates and distances, and the movement of tonnage to markets. It contains a history of both the interstate and intrastate rates since 1910 from the Indiana and Illinois mines to Rockford and Freeport.

The Commission had recently found in other proceedings that the general level of all the coal rates in the Indiana-Illinois territory was the lowest in the country, and appellee's own testimony in the instant case showed that the rates were too low. (The proposed rates would also reestablish a rate advantage which the Commission found that the Indiana mines had before the Illinois intrastate rates were reduced in 1930.) That the proposed rates were too low is shown by comparison with other rates in the same territory, including rates recently prescribed as reasonable by the Commission.

That the proposed rates would disrupt the long-standing differential relationship existing between the Indiana mining groups and between Indiana mines and Illinois mines was clearly demonstrated

in the testimony of witnesses and is obvious from the past history of the highly competitive conditions disclosed in previous cases before the Commission.

The proposed reductions would ultimately result in impairing the revenues of carriers by more than $1,400,000 annually, thus weakening their ability to provide adequate transportation service.

IV. The record and report show that the Commission did not impose upon appellee the burden of proving that the proposed rates were lawful. The Commission's report clearly shows that cancellation of the proposed rates was required not merely because appellee's evidence was insufficient, but because all the evidence of record showed that they are unlawful. *State of Ohio* v. *United States,* 6 F. Supp. 386, 388.

ARGUMENT

I

UPON FINDINGS SUPPORTED BY EVIDENCE THAT RATES STATED IN PROPOSED SCHEDULES ARE UNREASONABLY LOW, WILL LEAD TO FURTHER RATE REDUCTIONS AND WILL RESULT IN UNNECESSARY IMPAIRMENT OF CARRIERS' REVENUES AND THEIR ABILITY TO PROVIDE ADEQUATE AND EFFICIENT TRANSPORTATION SERVICE, THE COMMISSION HAS POWER TO REQUIRE CANCELLATION OF THE SCHEDULES

The decision of the District Court rests upon the view that the Commission has no power to prevent carriers from reducing interstate rates unless the rates proposed are shown to be non-compensatory

or below a reasonable minimum, and that, in the absence of such showing, the Act does not authorize interference with rate reductions even though such reductions will result in unnecessary impairment of the carriers' revenues and their ability to provide adequate and efficient transportation service contemplated by Section 15a of the Act.

The Commission's power "to determine and prescribe what will be the just and reasonable individual or joint rate, * * * or minimum * * * to be charged" and to make an order that the carrier shall not publish or collect "less than the minimum so prescribed", was added to Section 15 of the Act by Transportation Act, 1920.[7] Congress had already conferred the power to fix maximum rates and had, in 1910, empowered the Commission to prevent, by suspension pending investigation and hearing, any proposed rate from becoming effective and to require cancellation of the proffered tariffs upon a finding that the rate proposed would be unlawful. (Section 15 (7).) But the common

[7] Prior to that Act, the Commission had no power to prescribe minimum rates. *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 564, 565. The original Act conferred no power to fix any rate for the future. *Cin. N. O. and Tex. Pac. Railway* v. *Int. Com. Com.*, 162 U. S. 184, 196; *Interstate Com. Commission* v. *Railway Co.*, 167 U. S. 479, 511. The Act of 1906 (c. 3591, 34 Stat. 589) conferred the power to fix maximum rates. The Act of 1910 (c. 309, 36 Stat. 551) empowered the Commission to suspend, during investigation, tariffs proposing new rates, and placed upon the carrier the burden of proof to establish the reasonableness of increased rates.

law did not recognize that the rate of a common carrier might be so low as to constitute a wrong, and, prior to 1920, Congress had declined to declare such a rule. Until that year railroads were free to reduce their rates as they chose, without direct interference by the Commission, even though the result was the establishment of unreasonably low or unremunerative rates. *Skinner & Eddy Corp.* v. *United States,* 249 U. S. 557, 565.

The new railroad policy introduced into Federal legislation by the 1920 Act—the new purpose of Congress to ensure adequate railroad transportation service [8]—and the wide range of the new pow-

[8] In the *Dayton-Goose Creek* case, *supra*, the Court said (p. 478):

"* * * the Transportation Act adds a new and important object to previous interstate commerce legislation, which was designed primarily to prevent unreasonable or discriminatory rates against persons and localities. The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

ers conferred and new duties imposed to achieve the purposes of the Act have been explained by this Court in familiar decisions. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184; *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456; *United States* v. *Louisiana*, 290 U. S. 70.

Among the several means devised to provide revenue needed for maintenance of adequate transportation service, the power to prescribe minimum rates, interstate and intrastate, was not the least important. Without that power the Commission was helpless to prevent the nullification of its efforts, pursuant to Section 15a, to establish rates so that carriers as a whole (or in such rate groups as the Commission may designate) will, under efficient management, earn a net railway operating income equal, as nearly as may be, to a fair return upon the value of their railway operating property. Its importance in the scheme of the 1920 Act is demonstrated in the *Wisconsin case, supra*, where the Court points out (p. 566) that, if the carriers were compelled to charge the 2-cent passenger fare prescribed by the Wisconsin statute, instead of the 3.6-cent fare found reasonable by the Commission, they would lose $6,000,000 annually.

The Commission had for more than thirty years recommended to Congress that it be empowered to limit minimum rates to competitive points and

thus to stabilize rates and protect the interests and rights of the general public as well as the carriers.[9] That the power was conferred to accomplish the purposes for which the Commission's experience had demonstrated that it was needed is made clear

[9] In its Second (1888) and its Fourth (1890) Annual Reports the Commission pointed to the ultimate injury to both carriers and the public from low rates impelled by competition, and in its Seventh Annual Report (1893) it said (pp. 38–39):

"The Act confers upon the Commission the power to reduce a rate that is unreasonably high, but not to raise a rate that is unreasonably low. Experience has fully satisfied us that this is a defect in the statute * * * the power to limit minimum rates to competitive points would tend strongly to promote stable rates.

We can anticipate no opposition to such legislation, as its purpose and effect would be the protection of the interests and rights of the general public, as well as carriers, and without possible injury to the latter, and it is believed it would render the administration of the law easier and more successful."

Similar statements are contained in its Eighth, Eleventh and Twelfth reports (1894, 1897 and 1898), and in its Thirty-Third Annual Report, submitted December 1, 1919, while the Congress had under consideration the new legislative policies and the new powers and duties which were incorporated in Transportation Act, 1920, the Commission said (p. 4):

"The regulating tribunal should have authority to prescribe not only the maximum which the carrier may charge, but also the minimum. This power would restrain an individual carrier from furthering its own ends at the expense of others by unwise and unwarranted upsetting of reasonable rate adjustments. If the rates and charges are by regulation confined within the reasonably narrow limits between the maximum and minimum reasonable charges, no public interest can be injured by the carriers all maintaining charges within those limits."

in decisions of this Court. In the *Wisconsin case, supra,* the Court said (p. 585–586) that the power granted by the 1920 Act to require increases in intrastate rates to minima prescribed by the Commission was one of the means by which Congress sought to accomplish the purpose, expressly declared in Section 15a, to maintain an adequate railway service, and that it was "impossible to escape the dovetail relation between that provision [Section 13 (4)] and the purpose of § 15a." (See also *United States* v. *Louisiana, supra,* pp. 74–75.) And, in the *New England Divisions Case, supra,* p. 190, note, the Court said that another means to that end was the power conferred "to fix minimum, as well as maximum, rates; and thus prevent cut-throat competition and the taking away of traffic from weaker competitors." This power to fix minimum rates "to preclude the absorption of traffic of weaker competitors by cut-throat competition" was said by the Court, in *United States* v. *Louisiana, supra,* p. 74, to be one of the associated provisions of the 1920 Act "calculated to preserve carrier income in the interests of an efficient transportation service." In *United States* v. *Illinois Central R. R. Co.,* 263 U. S. 515, the Court stated (p. 525) that since the Transportation Act, 1920, "the interests of the individual carrier must yield in many respects to the public need" and that "the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate-policies of a competitor, which were

theretofore uncontrollable." See also *Texas & Pacific Ry. Co.* v. *G. C. & S. F. Ry. Co.*, 270 U. S. 266, 277.

The three decisions of district courts, other than the decision below, which have dealt with the minimum rate power over interstate rates hold that the exercise of the power is not limited to rates which are non-compensatory or below a reasonable minimum, but extends to rate reductions which will disrupt rate structures resulting in "rate wars" and impairment of carriers' revenues. In *Jefferson Island Salt Mining Co.* v. *United States*, 6 F. (2d) 315 (N. D. Ohio, 1925), the court, in sustaining an order of the Commission which required increases in rates on salt to Chicago from mines in Louisiana to a minimum prescribed by the Commission, rejected as being too restricted a view of the Commission's minimum rate powers the contention of the carriers that the Commission was empowered to increase a rate only when shown to be non-compensatory, unreasonably low from the carriers' viewpoint, or prejudicial or discriminatory. It said (p. 319) that:

> It was not necessary that the Commission should first have found that the Detroit to Chicago rate, or the Louisiana to Chicago rate, was noncompensatory, in order that a higher minimum rate might be prescribed, if in fact, as the Commission was justified in finding, proper rate relationships between different carriers and localities could not otherwise be established, or ruinous rate

> wars, threatening the ability of the Commission to fix rates for the carriers as a whole or in groups, which would permit the earnings prescribed in section 15a, could not otherwise be avoided.

See to the same effect *Anchor Coal Co.* v. *United States,* 25 F. (2d) 462, 471[10] (S. D. W. Va., 1928); *Youngstown Sheet & Tube Co.* v. *United States,* 7 F. Supp. 33 (N. D. Ohio, 1934).

The refusal of the court below to construe the minimum rate power conferred over interstate rates by Section 15 (1) in the light of Section 15a rested upon its erroneous view that Section 15a (2), as originally enacted "was very considerably changed by the amendment of 1933." (R. 53.) That the purposes of the latter section were not changed by the 1933 amendment is made clear by this Court's decision in *Florida* v. *United States,* 292 U. S. 1, holding (p. 8) that:

> The new Act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways.

[10] In that case the District Court enjoined the Commission's order in *Lake Cargo Coal,* 139 I. C. C. 367, requiring cancellation of reduced rates. This Court reversed the District Court on the ground that the case was moot. *United States* v. *Anchor Coal Co.,* 279 U. S. 812.

If the 1933 amendment was designed to aid rather than weaken national control over intrastate rates for essential national purposes, *a fortiori* it was designed to aid rather than weaken control over interstate rates, for, as observed in the *Wisconsin case, supra,* two-thirds of the revenue necessary to provide adequate transportation service is derived from interstate traffic, while intrastate traffic produces only one-third. It is submitted that the Commission's powers to prescribe minimum interstate rates under Section 15 (1) must be construed in the light of the amended Section 15a and the District Court clearly erred in refusing so to construe it.

The Commission itself, as shown by its report in the instant case (R. 45–46), has consistently construed and applied its minimum rate powers in the light of its duties under, and the purposes of, Section 15a, both before and since the latter section was amended in 1933, to proposed reductions in interstate rates even though such rates have not been shown to be non-compensatory.[11]

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[11] In *Container Service*, 173 I. C. C. 377, the Commission (p. 430) said:

"* * * we have repeatedly refused to find proposed reductions in rates justified when it was shown that they would be harmful to the rate structure as a whole, or as applied to a particular commodity, or otherwise not in harmony with section 15a. *Trunk Line and Ex-Lake Iron Ore Rates*, 69 I. C. C. 589, 610, 611; *Import and Domestic Rates on Vegetable Oils*, 78 I. C. C. 421; *Grain and Grain Products from Kansas and Missouri to Gulf Ports*, 115 I. C. C. 153,

In the court below appellee relied upon *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, to support the contention that the Commission's minimum rate power may be exerted only when the proposed rates are not compensatory or will cast a burden on other traffic. There the parties agreed "that authority for the order must be found in § 3 (1)" (p. 633). That case is clearly inapposite for the reason that there was involved only the question whether the rates to New Orleans unduly prejudiced the Texas ports in violation of Section 3 (1) of the Act. There was not involved the reasonableness of the rates under Section 1, or the question whether the rates in controversy violated or thwarted the purposes of Section 15a (2).

The Order Is Not Void Because the Commission Did Not Prescribe Minimum Rates in Lieu of the Rates Required to be Cancelled

Appellee argued in the court below that, while the Commission clearly has power to require cancellation of proposed reduced rates if found upon adequate evidence to be in violation of the Act, it may not require that proposed rates be cancelled without, at the same time, prescribing the mini-

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164; *Grain and Grain Products to Eastern Points*, 122 I. C. C. 551, 563, 564; *Lake Cargo Coal*, *supra*; *Salt from Louisiana Mines to Chicago*, 66 I. C. C. 81; *Reduced Rates on Coal to Kansas City*, 66 I. C. C. 457; *Coal from Wyoming Mines*, 68 I. C. C. 254; *Coal from Southwest to Omaha*, 73 I. C. C. 536; *Transcontinental Cases of 1922*, 74 I. C. C. 48; *Canned Goods from Pacific Coast*, 132 I. C. C. 520; *Cement from Linwood*, 140 I. C. C. 579, 582; * * *."

mum rate to be charged. The opinion of the District Court ignores the contention.

The minimum rate power, in conjunction with the suspension power granted by Section 15 (7), is essentially *preventive* in character, the purpose being not merely to enable the Commission to prescribe the minimum rates to be charged, but also to prevent carriers from establishing rates which, measured by the standards and purposes of the Act as enlarged in 1920, are too low. To accomplish the latter purpose mere cancellation of the proposed rates is all that need be done. Whether the Commission prescribes rates in lieu of those it requires to be suspended and cancelled depends upon the pleadings, issues, record and the practical situation before it.

In most cases cancellation of proposed rates leaves in effect rates already on file. So, in the instant case, rates on coal from the same points of origin to the same destinations and over the same route have long been in effect. Appellee's proposed tariffs sought merely to reduce some of these rates. The suspension of the proposed reductions left the old rates effective and available to appellee and its shippers, for the Commission's suspension order expressly required "that the rates and charges * * * sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspen-

sion and any extension thereof has expired." (R. 72.) The suspension order, approximating the language of Section 15 (7), further provided that the Commission enter upon a hearing "concerning the lawfulness of rates, charges, regulations, and practices stated in the said schedules." The issue was whether the proposed rates were themselves lawful within the standards set up by the Act, and not whether some other rate, or what particular minimum rate, would be lawful. There was therefore no occasion, upon the face of the pleadings instituting the investigation, for the Commission to prescribe the minimum rate to be charged, nor was there a practical situation which required more than mere cancellation of the proposed rates.

Nothing in the Act requires the Commission to prescribe other rates in lieu of those it finds to be unlawful and requires to be cancelled. In *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 279 U. S. 768, this Court approved an order of the Commission which merely required cancellation of schedules proposing increased grain rates, and did not prescribe the maximum rates to be charged. The Court said (p. 776):

> In ordering cancellation of the proposed tariff the Commission exercised only its function of determining the reasonableness of rates.

If appellee's contention is sound, the order sustained in that case was unlawful merely because

the Commission did not accompany its requirement that the proposed tariffs be cancelled with a further requirement that a particular rate be established.

It is submitted that the grant of authority to prescribe minimum rates, in the amendments to Section 15 (1) made by the Transportation Act, 1920, read in conjunction with the duty imposed at the same time upon the Commission by Section 15a (2) to "establish or adjust . . . rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will . . . earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers", has the effect of bringing rates which are unreasonably low within the provisions of Section 1 (5), which declares unlawful "every unjust and unreasonable" rate. Section 15a (2), as amended in 1933 (c. 91, 48 Stat. 220), recognizes this state of the law even more forcefully in providing that "in the exercise of its power to prescribe just and reasonable rates" the Commission shall give due consideration, among other factors, "to the need, in the public interest, of adequate and efficient railway transportation service * * *; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." And, it is further submitted, the Commission within this au-

thority may declare proposed rates unlawful as unreasonably low without at the same time fixing minimum rates, just as it may declare proposed rates unlawful as too high without at the same time fixing maximum rates.

II

THE FINDINGS MADE BY THE COMMISSION ADEQUATELY SUPPORT THE ORDER

The bill of complaint alleges (R. 5, 6), and appellee contended in the District Court, that the Commission's report does not contain findings necessary to support its order. That court did not decide whether the findings made were sufficient.

The only requirement of the Act concerning the nature of the report and findings to be made by the Commission is found in Section 14 (1), which declares that after the Commission makes an investigation "it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made." This Court said in *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 489–490, that the Hepburn Act, 1906, modified Section 14 "so as to dispense with the necessity of formal findings of fact except in cases where damages (or reparation) are awarded * * *." The necessity of a spe-

cific report of the facts and "complete statements by the Commission showing the grounds upon which its determinations rest" was declared by this Court in *Beaumont, Sour Lake & Western Ry. Co.* v. *United States,* 282 U. S. 74, 86. And in *Florida* v. *United States,* 282 U. S. 194, 215, the Court set aside an order of the Commission which required increases in intrastate rates because "of the lack of the basic or essential findings required" to support the order.

Among the basic findings of fact contained in the Commission's report are the following:

(1) Keen competition exists between the Indiana and the Illinois mines and between the individual groups of mines in each of these States in the sale of coal at Rockford, Freeport and other destinations here involved; the rates from the various origin groups are definitely related to each other, and the rates from Indiana groups are closely related (R. 35);

(2) Prior to August 20, 1930, producers in the Indiana groups had an advantage over their Illinois competitors at the destinations here considered, which the proposed reduced rates from Indiana groups would reestablish (R. 37);

(3) All of the existing rates from Illinois, Indiana and Western Kentucky to the destinations here considered are less than reasonable maxima (R. 37);

(4) The decrease in volume of coal tonnage from Indiana mines to these destinations for the two-year period, 1931 and 1932, after the intrastate rates in Illinois were reduced, was less than the decrease in the movement from the Illinois mines to the same destination in the same period (R. 38, 39);

(5) Based upon a comparison of the length of hauls, properly computed, the interstate rates from Indiana groups were lower than intrastate rates from Illinois groups to the destinations under consideration, and were lower in comparison with the schedule of reasonable rates prescribed by the Commission in other cases (R. 36);

(6) Six carriers in addition to appellee serve either or both of the same mine groups from which appellee proposes to reduce its rates, and, if permitted to become effective, the reductions proposed from those groups by appellee would not only disrupt the long-existing differential relation between the several Indiana groups, but would also have the effect of splitting up the groups served by appellee, and would result in lower rates from mines on appellee's line in these groups than from mines in the same groups and in the same immediate vicinity on the lines of other competing carriers (R. 40);

(7) If the proposed reduced rates are permitted to become effective similar reductions will be made, for competitive reasons, by other carriers in the

same groups, and reductions will be sought also from the more distant Southern Indiana groups (R. 41);

(8) Retaliatory reductions in Indiana rates and in Illinois intrastate rates would inevitably follow appellee's proposed reductions and result in annual revenue losses of $1,400,000.00 (R. 43):

(9) The immediate effect of the proposed reductions would be to give mines on appellee's line lower rates to the destinations here considered than rates from mines on competing lines in the same groups, but this condition would not long prevail, as the other carriers in those groups would, for competitive reasons, publish similar reduced rates, and such reductions would destroy the differential relations now existing as between those groups and the other Indiana groups (R. 40):

(10) The reductions proposed by appellee would result in a level of rates from the Indiana groups lower than that which the Commission stated in the *Illinois case, supra,* was well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates, with like reductions in the rates from Western Kentucky for the purpose of preserving the differential bases over the rates from the Southern Illinois group prescribed by the Commission, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and

efficient railway transportation service (R. 44); and

(11) The proposed rates, "compared with rates recently prescribed for like distances in this general territory, would be unreasonably low" (R. 45).

Upon these and other basic facts set forth in the report from the evidence of record the Commission reached the following conclusion (R. 46–47):

> We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed, and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.
>
> We find that the proposed rates would be unreasonable and in violation of sections 1 (5) and 15a (2) of the act.

Appellee has not indicated what findings in addition to those contained in the report of the Commission are required to support its order. It is submitted that the findings made are quite sufficient to enable the Court to determine whether there is "a rational basis for the conclusions ap-

proved by the administrative body" (*Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 287), are as full and complete as were the findings held sufficient in *United States* v. *Louisiana*, *supra*, p. 80, and *Florida* v. *United States*, 292 U. S. 1, and constitute an adequate basis for the order.

III

THE EVIDENCE BEFORE THE COMMISSION ADEQUATELY SUPPORTS ITS FINDINGS AND ORDER

Resting its decision upon the legal theory that the Commission could exert its minimum rate-making power only to prevent establishment of such rates as it found to be "not compensatory or below a reasonable minimum" (R. 52) and that this limitation upon the use of the power is not removed by Section 15a (2), as amended (R. 53), the District Court held that there was no evidence whatever before the Commission to show that the proposed rates were not compensatory or below a reasonable minimum, and no evidence that the rates would violate any provision of the Act. The only evidence discussed in the opinion is that of one witness, who testified that if the proposed rates became effective other carriers would promptly make similar reductions in their own rates, and the court concluded that this witness' testimony was not entitled "to much weight as evidence" (R. 51).

The intense competition between the coal operators in this territory and between the several car-

riers serving them has brought before the Commission many times litigation involving these rates, with the result that the Commission approached the instant proceeding with an intimate knowledge of the important facts concerning competition, transportation conditions affecting both the carriers and the rates, the finely balanced differential relationships between the various groups in each State, and the long-standing relationships between the groups of mines in the respective States. *Illinois Coal Cases 1920, supra; Illinois-Indiana Coal Cases,* 128 I. C. C. 265; *West Kentucky Coal Bureau* v. *Illinois Central R. Co.,* 172 I. C. C. 279; Coal Trade Assn. of *Indiana* v. *Baltimore & O. R. Co.,* 185 I. C. C. 225, 190 I. C. C. 643; *Intrastate Rates on Bituminous Coal in Illinois;* 182 I. C. C. 537.

The last cited case, known as the *Illinois case,* was brought by the carriers, including appellee, serving Illinois, and their complaint alleged that the intrastate rates from the Southern Illinois and Springfield groups to Rockford and Freeport, after the reductions in 1930, would cause undue advantage, preference and prejudice between persons and localities in intrastate commerce and those in interstate commerce, and unjust discrimination against interstate commerce. (R. 36.) Specific comparisons were made of the reduced Illinois rates to Rockford, Freeport and other destinations with interstate rates in Indiana groups to the same destinations. The Commission found that not

only were some of the intrastate rates too low, but also that most of the interstate rates from Indiana were so far below the general level of rates in that territory that it was not justified in increasing the intrastate rates "until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory." (R. 36.)

The report of the Commission in the instant case states further (R. 37):

> In view of our finding in the *Illinois* case, it is obvious that prior to August 20, 1930, producers in the Indiana groups had an advantage over their Illinois competitors at the destinations here considered which the proposed reduced rates from the Indiana groups would reestablish.

In rejecting the low rates in the Illinois-Indiana area for purposes of comparison with other rates, the Commission had said in *Intrastate Rates on Bituminous Coal Within Ohio,* 192 I. C. C. 413, 428 that:

> It is generally conceded that the basis of rates on coal in the Illinois territory is the lowest in the country. This has greatly been brought about by a competitive condition differing from that in the Ohio territory, although some testimony was introduced to indicate that the actual operating conditions in Illinois are not more favorable than in Ohio. Chicago, in the Illinois territory, is the greatest coal market in this country, and,

> as stated in *Intrastate Rates on Bituminous Coal in Illinois, supra,* consumes annually 30,000,000 to 35,000,000 tons of coal. It was also there stated that the rate level to Chicago is the result of keen competition between producers of eastern coal, moved both by rail and water-and-rail, and producers of Illinois and Indiana coals. Like competition also exists between carriers that have their own rails extending from particular groups in Illinois and Indiana to Chicago and whose principal interest is to move coal from their own mines. The rates to Chicago have had a depressing effect upon other rates on bituminous coal in this territory and have resulted in the establishment many years ago of a competitive basis of rates that is on a very low level.

Appellee's own witness testified in the instant case that the rates of $1.87 and $1.92 from the Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport, respectively, "are less than reasonable maximum rates as are all the rates from Illinois, Indiana, and western Kentucky." (R. 74.)

After determining that average distances should be used [12] and that it could not take account merely

[12] In its attempt to prove that the proposed rates were reasonable as compared with rates from the Springfield group, appellee, computing distances only from the mines on its own line in the Indiana groups, used *average* distances from all mines in the Springfield group. So computed, the lengths of its own hauls reflected a totally inaccurate portrayal of distances from the Indiana groups and made these

of the tonnage and rates to mines on appellee's line,[13] the Commission made rate comparisons, examined the effects of reduced Illinois rates upon

distances valueless for purposes of comparison. Witness Waffle testified that distances from one or more mines in a group should not be computed on the length of haul of the one railroad serving a particular mine, but "should absolutely be the average of the entire group of all of the railroads serving that group." (R. 106.) The exhibits of all witnesses, other than appellee's, computed distances for comparative purposes upon the average of all mines within a particular group. (Exs. 8–10, 27–29, 34–35, 39–41.) Appellee's comparison of distances from the mines located only on its line in these groups with the average distances from all mines in the Springfield group favored it in the rate comparisons, but the Commission rejected the method of comparison. (R. 39–40.)

While it would have been within the Commission's power to reject appellee's method of computing distances simply because in its own judgment they were erroneous (*Georgia Public Service Commission* v. *United States*, 283 U. S. 765). the testimony submitted by all other witnesses was in accord with the Commission's view that distances so computed should not be used.

[13] Appellee urged that it transported 95 percent of the coal moving from Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport, and that therefore whether other carriers serving those two groups reduced their own rates to meet its proposed reductions was immaterial. The Commission disagreed. It pointed out that six carriers in addition to appellee serve either one or both of those groups and that witnesses representing those carriers had testified that if the proposed reductions were permitted to become effective the competing carriers would make similar reductions in the rates from those groups and from the more distant southern Indiana groups. Its report demonstrates the effect of the proposed rates in disrupting the long-existing differential relation between the several Indiana groups and in splitting the Brazil-Clinton and Linton-Sullivan groups. (R. 40.)

tonnage from Indiana mines, inquired into the effect of the proposed rates upon the rate structure in this whole territory, and calculated the effects upon carriers' revenues. These comparisons and conclusions are both reasonable and supported by the evidence. The sufficiency of the evidence will be discussed under the two general findings made by the Commission, first, that the proposed rates were unreasonably low, and, second, that the proposed rates would result in impairment of carriers' revenues and their ability to provide adequate transportation service.

A. The Evidence Amply Supports the Finding That the Proposed Rates Are Unreasonably Low

Rate comparisons: Bearing upon the level of the proposed reductions, the record contains comparisons thereof with rates from Southern Illinois groups to Rockford, Freeport and intermediate destinations, and similar comparisons with rates from Central Illinois and comparisons of distances over various routes of the several competing carriers serving the two groups. (Exs. 13–21, R. 163–170.) Upon this statistical information the Commission was able to make definite comparisons of the earnings produced by the proposed rates and rates from the Illinois groups. It pointed out that to Rockford and Freeport the average distances from the Springfield group are 34.1 and 43 miles, respectively, less than average distances from the Brazil-Clinton group, but that, nevertheless, the

ton-mile revenue under the proposed rates from the Brazil-Clinton and Linton-Sullivan groups would be 6.2 and 6 mills, respectively, to Rockford and 5.5 and 5.3 mills, respectively, to Freeport, as compared with ton-mile revenue of 7.1 and 6.5 mills from the Springfield group to the same respective destinations, and concluded that "as respondent has testified that it considers the rates from Springfield as being lower than reasonable, it is difficult to perceive how it can justify the proposed rates under which the revenue would be still lower than the revenue accruing under the rates from Springfield." (R. 44.)

Further comparison of the proposed rates was made with rates prescribed as reasonable by the Commission in *Coal Trade Assn. of Indiana* v. *Baltimore & O. R. Co., supra,* on coal from the same Indiana groups to destinations in Illinois. This comparison indicated that the proposed rates were 82 percent to Rockford and 76 percent to Freeport of the reasonable rates there prescribed. (R. 45.) Upon the basis of reasonable rates there prescribed by the Commission, the rates to Rockford and Freeport would be $2.23 and $2.31, as compared with the proposed rates of $1.70 and $1.75. After making these comparisons, the Commission concluded that "the proposed rates, compared with rates recently prescribed for like distances in this general territory, would be unreasonably low." (R. 45.)

This evidence was sufficient to justify the Commission in reaching the conclusion that the proposed rates were unreasonably low, measured by standards ordinarily and customarily applied in cases involving the reasonableness of rates. In *Louisville & Nashville R. Co.* v. *United States,* 238 U. S. 1, this Court explained (pp. 15–16) that mere comparison with other rates, some of which had, as in this case, been established by the Commission, was sufficient in order to test the reasonableness of the rate under consideration, and referred to its decision in *Int. Com. Comm.* v. *Louis. & Nash. R. R.,* 227 U. S. 88, which held that the value of comparisons with other rates varies according to the circumstances, but that "the weight to be given it is peculiarly for the body experienced in such matters and familiar with the complexities, intricacies and history of rate-making in each section of the country."

B. The Evidence Compels the Conclusion Reached by the Commission that the Proposed Rates Would Result in Ultimate Impairment of Carriers' Revenues and Ability to Provide Adequate Transportation Service

Appellee's tonnage: Appellee contended before the Commission that while all rates in the Indiana-Illinois territory were less than reasonable rates, it nevertheless was entitled to further reductions in order to secure an equal opportunity for the mines it served in the Rockford and Freeport markets. As a basis for this contention, appellee claimed that a decrease in its coal tonnage had

resulted because of the reductions in intrastate rates by the Illinois Commerce Commission.

However, the evidence shows (Exs. 43 and 44, R. 217–219), and the Commission found, that the tonnage from the Indiana mines had decreased less than the tonnage from the Illinois mines since the intrastate rates were reduced in 1930. (R. 38–39.) The Commission's report so clearly portrays the facts of record that it is set forth here at length:

> An exhibit, as corrected at the argument, introduced by the Illinois Central Railroad Company, protestant, indicates that the volume of coal moved to Rockford in 1932 from the southern Illinois group was 42.7 percent of that moved in 1929, from the Springfield group 245 percent, from the Brazil-Clinton group 39.6 percent, and from the Linton-Sullivan group 88.1 percent, from all groups in Illinois 53.4 percent, and from all groups in Indiana 87.7 percent. The same exhibit indicates that the volume of coal moved to Rockford in 1931 from the southern Illinois group was 54.3 percent of that moved in 1929, from the Springfield group 187.7 percent, from the Brazil-Clinton group 58.4 percent, from the Linton-Sullivan group 42.5 percent, from all groups in Illinois 58.4 percent, and from all groups in Indiana 88.7 percent. The carrier used 1929 for this comparison because that was the first full year prior to the reductions in the Illinois intrastate rates. The increase in the tonnage of coal from the Springfield group to

> Rockford during 1931 and 1932 over the tonnage shipped in 1929 resulted from the distribution of coal for relief purposes at Rockford, which coal was purchased at mines in the Springfield group because of the low prices prevailing in that group. This exhibit was introduced for the purpose of showing that, with the exception of the coal shipped from the Springfield group to Rockford for relief purposes, the decrease in the volume of traffic from the Indiana mines to the destinations here considered, during 1931 and 1932, compared with the 1929 traffic (the year prior to the reduction in the rates from the Illinois mines), was less than the decrease in the movement from the Illinois mines to the same destinations during the same period. On the record we are of the opinion that the percentage of the tonnage from the Indiana groups to the destinations herein considered during the period shown had not decreased as a result of the reduced rates from the Illinois groups.

The Commission was clearly justified upon the facts in reaching that conclusion, particularly in view of the statement made earlier in its report (R. 37) that prior to the Illinois intrastate rate reductions the Indiana groups had an advantage over their Illinois competitors in the Rockford and Freeport markets which the reduced rates proposed by appellee would reestablish.

Effect on Indiana and Illinois rate structure: The effect which the proposed reductions would

have upon competing mines in the Brazil-Clinton and Linton-Sullivan groups, in the other Indiana groups, in Illinois and Western Kentucky, and upon the revenues of appellee and the competing carriers serving the various groups are largely matters of calculation. The Commission found (R. 44):

> The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the Illinois case, to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service.

While it is the Commission's judgment rather than that of witnesses which is to be exercised in reaching conclusions in such matters, it may be noted that every witness on the point, except one who testified for appellee, declared either that the proposed reductions should be carried to all mines in other Indiana groups (R. 91), or that it was inevitable that the reductions would be followed by retaliatory reductions in rates to all Indiana mines, to Illinois mines and to West Kentucky mines.

(Rozene, R. 116, 117; Malum, R. 122, 127; DeCamp, R. 129, 132.)

The record contains no testimony of any substance whatever which does not support at least in part the conclusion thus stated by the Commission concerning the effects of the proposed rates. Witness Waffle (representing Coal Trade Association of Indiana) stated in support of the reductions that all mines in the Indiana groups should have reductions of 17 cents (R. 91), but that he did not believe such reductions would follow in the rates from Illinois groups (R. 107). Appellee's own witness, who was its Coal Traffic Manager, did not seriously contend that retaliatory reductions would not follow those proposed by him. He said (R. 89): "My answer to the question whether these rates if permitted to go into effect, would disrupt the rates in the general territory, is to let the future take care of itself." He was willing that other carriers make 17-cent reductions in rates from the other Indiana groups "if they can get by", and said (R. 90):

> Now, when you are passing out 17 cents, why confine it to west Kentucky or southern Illinois? Let it go all the way around. Give them all 17 cents. I would be willing to do that. I am advocating that.

The Commission said (R. 42) that "in fact it would be difficult to conceive of a proposal more likely to precipitate unwarranted changes in a

keenly competitive rate structure than that here proposed." To reach any other conclusion the Commission would have been compelled to ignore substantial evidence and its own experience and observation in dealing with finely balanced rate relationships in highly competitive territories.

Revenue effects: In the light of existing rates and tonnage in this general territory, the Commission foresaw reductions alone costing the carriers more than $1,400,000 annually. (R. 43.) Further losses in revenue would result because the reductions were proposed to 36 stations on appellee's line intermediate to Rockford and Freeport, the reductions to these stations ranging from 4 to 10 cents. (R. 43–44.)

Concerning the effects of further reductions in coal rates upon revenues of carriers, Witness DeCamp pointed out that in normal years 40 percent of tonnage and 20 percent of freight revenues of Illinois Central Railroad Company was derived from coal traffic, that in 1931 coal traffic furnished only 31 percent of the total tonnage and 17 percent of its total freight revenues (R. 128). He further testified (R. 132) that any substantial reduction in coal rates in the Indiana-Illinois territory would have a "drastic" effect on the Illinois Central and other carriers serving that territory, for the reason that coal is their principal commodity.

This Court has held to be sufficient ~~similar~~ similarly supp findings by the Commission concerning the revenue

effects of state rates upon interstate commerce. *United States* v. *Louisiana, supra;* and *Florida* v. *United States,* 292 U. S. 1.

IV

THERE IS NO FOUNDATION IN EITHER FACT OR LAW FOR THE CONTENTION THAT THE COMMISSION INVALIDATED ITS ORDER BY IMPOSING UPON APPELLEE THE BURDEN OF SUSTAINING THE PROPOSED RATES

The District Court stated that "the burden is upon the party complaining" to establish the fact that a proposed reduced rate is unreasonably low (R. 51), citing *Anchor Coal Co.* v. *United States, supra.* We think that the court and appellee have misconceived and have misapplied the rule concerning the burden of proof.

When the hearing convened, the Commission's examiner stated that the subject of the hearing was appellee's proposed rates which had been suspended upon protests of various parties. (R. 73.) The record discloses no suggestion by the examiner concerning the order of procedure or the burden of proof, and no statement by appellee's counsel concerning the question whether the burden was upon it to justify the proposed rates. On the contrary, it shows (R. 74) that appellee's coal traffic manager, without protest, was the first witness to proceed to the stand and submit his testimony. Witness Waffle next appeared in support of the proposed reductions (R. 90) and, without raising any

question concerning the burden of proof or order of procedure, proceeded to submit his oral testimony and exhibits at great length. His testimony concluded the direct evidence on behalf of appellee (R. 108). Witnesses for parties who had protested against the rates then submitted their testimony and, at the conclusion thereof, Witness Waffle was recalled (R. 134) and testified in rebuttal. Following him Witness Leahy (representing Binkley Coal Company and others, interveners in the District Court, R. 14) also testified in rebuttal (R. 139) and his testimony concluded the hearing. (R. 143.)

The court held in *State of Ohio* v. *United States*, 6 F. Supp. 386, 388–389, that:

> A question of where lies the burden of proof can be of serious moment only when the evidence is in a state of equipoise. Here, with all the evidence before it, the Commission found that the intrastate rates were unduly preferential of Ohio shippers and localities and unduly prejudicial against interstate localities and shippers in Pennsylvania and West Virginia. There was no question of the burden of proof presented, for, as we have said, this was practically the only conclusion at which the Commission could have arrived.

It is clear from the report of the Commission that it did not require cancellation of the proposed rates merely because appellee's testimony was in-

sufficient to show their reasonableness, but because upon all the evidence the proposed rates were unlawful.

CONCLUSION

The decree of the District Court should be reversed and the bill of complaint dismissed.

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APPENDIX

The Interstate Commerce Act, as amended, provides in part:

SEC. 1 (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * * (c. 104, 24 Stat. 379, as amended; c. 3591, 34 Stat. 584; c. 309, 36 Stat. 544; c. 91, 41 Stat. 474; U. S. C., Title 49, Sec. 1).

SEC. 15 (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or

prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. (C. 91, 41 Stat. 484; U. S. C., Title 49, Sec. 15.)

15 (7). Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested

carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be

found not justified. At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible. (C. 309, 36 Stat. 551; c. 91, 41 Stat. 484; c. 510, 44 Stat. 1447; U. S. C. Sup. VII, Title 49, Sec. 15 (7).)

SEC. 15a (2) [As amended June 16, 1933]. In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service. (C. 91, 48 Stat. 220, U. S. C. Sup. VII, Title 49, Sec. 15a.)

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